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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,943	12/20/2001	Charles H. Culp	017575.0493 (TAMUS 1561)	2599
5073	7590	08/19/2005	EXAMINER	
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			PALADINI, ALBERT WILLIAM	
			ART UNIT	PAPER NUMBER
			2125	

DATE MAILED: 08/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/027,943

Applicant(s)

CULP ET AL.

Examiner

Albert W. Paladini

Art Unit

2125

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/02, 1/05, 3/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-39 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-41 of copending Application No. 10/004,985. Although the conflicting claims are not identical, they are not patentably distinct from each other.

Independent claim 1 of the instant Application uses the same steps to diagnostically evaluate energy consumption of a facility as claim 1 of copending application 10/004,985 uses for retrofit identification.

Independent claim 20 of the instant Application uses the same system to diagnostically evaluate energy consumption of a facility as claim 20 of copending application 10/004,985 uses for retrofit identification.

Similarly, the dependent claims of the instant Application further limit its independent claims 1 and 20 as the dependent claims of copending application 10/004,985 limit its independent claims 1 and 20.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Relevant Prior Art

Wedekind (5115967) discloses a method for optimizing climate control energy consumption in a building. An assembly has a processor for storing a non-linear efficiency model, and receiving inside and outside air temperatures, and changing at least one parameter utilizing the results of the non-linear model.

Cmar (5566084) discloses a process for identifying energy consumption and demands which utilizes regression models to ascertain the change or physical parameters on energy consumption, etc, and which results in a retrofitting operation dependent on the parameters to be optimized.

Takeyama (5852560) discloses an apparatus that assesses a load that industrial products add to the environment by comparing a plurality of energy consumption models utilizing environmental load equations.

Gruber (6439469) discloses a predictive apparatus for controlling or regulating supply values, wherein the apparatus is provided with: a first data store, in which rules, based on a linear consumer model, for calculating process values are stored, a second data store, in which the rules for restrictions or limit values to be observed for process values and values derived from process values are stored, and means for repeatable optimizing of the energy consumption or of the energy costs with the aid of linear or quadratic programming, wherein the means is configured such that the optimizing can be carried out over a sliding time horizon.

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Smith (6785592) discloses a system and method for optimizing energy consumption for one or more facilities. The energy services center 230 feeds data from energy consumption models, which are obtained from (386, figure 3) to optimization workstation 366. The optimization algorithms utilized data obtained from data acquisition metering devices (320, figure 3) The optimization algorithms compares every energy consumption model with every other energy consumption model, and selects the best optimization model. This is implemented by real time control of the various, discrete building systems and subsystems.

3. Any inquiry concerning this communication or earlier communication from the examiner should be direct to Albert W. Paladini whose telephone number is (571) 272-3748. The examiner can normally be reached from 7:00 to 3:00 PM on Monday, Tuesday, Thursday, and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Leo P. Picard, can be reached on (571) 272-3749. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

August 16, 2005



Albert W. Paladini
Primary Examiner
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